



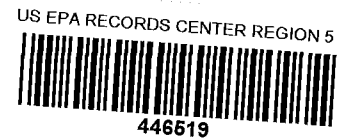
RICK SNYDER
GOVERNOR

STATE OF MICHIGAN
DEPARTMENT OF ENVIRONMENTAL QUALITY
LANSING



DAN WYANT
DIRECTOR

November 18, 2011



Mr. Michael Berkoff
United States Environmental Protection Agency
Region 5
77 West Jackson Boulevard (SRF-6J)
Chicago, Illinois 60604-3507

Dear Mr. Berkoff:

This letter is written to respond to the questions posed in your October 17, 2011 letter pertaining to conditions and status of the areas and material within Operable Unit 1 of the Allied Paper, Inc./Portage Creek/Kalamazoo River Superfund Site (OU1).

In your first question, you asked about the Michigan Department of Environmental Quality's (MDEQ's) position as to whether any of the disposal areas within OU1 are or were "storage or disposal facilities" regulated under Michigan's laws implementing the Resource Conservation and Recovery Act, 1976 PA 94-580, as amended (RCRA). The answer to your first question is no; none of the disposal areas within OU1 are or were storage or disposal facilities regulated under Michigan's Part 111, Hazardous Waste Management, of the Natural Resources and Environmental Protection Act, 1994 PA 451, as amended (NREPA). Part 111 of the NREPA is the approved state program to implement those portions of RCRA that are fully delegated.

In your second question, you asked whether polychlorinated biphenyl (PCB) materials present in OU1 are hazardous waste subject to Michigan's hazardous waste regulations. The answer to your second question is no; under Michigan law, PCBs are a solid waste as defined by RCRA, and are not regulated under Part 111 as they exist within OU1. If PCB materials are mixed with other hazardous waste that meets the definitions in Michigan's Part 111, then those PCB-containing materials will be managed as hazardous waste as well. However, the known PCB materials within OU1 are not mixed with other hazardous waste and, therefore, are not regulated under Part 111.

An analysis in *The Complete Guide to the Hazardous Waste Regulations*, Second Edition (Wagner, 1994) sums up the state's position:

"PCBs are not listed as hazardous waste under RCRA, although they are an Appendix VIII hazardous constituent, and an Appendix IX groundwater constituent. There have been numerous unsuccessful attempts to transfer the regulation of PCBs from TSCA to the RCRA program. However, the recent promulgation of manifesting, notification, and tracking requirements for PCBs in 1989 will probably ensure that the PCB program will remain under TSCA."

Michigan has implemented its environmental programs by giving primacy to the federal Toxic Substances Control Act (TSCA) whenever PCBs are a chemical of concern. In regard to disposal in particular, Michigan has one hazardous waste landfill regulated pursuant to Part 111 that has also sought the ability to receive and dispose of PCBs. Because Part 111 itself has not been viewed as trumping the federal TSCA statute, that operator's license always includes this condition:

"The licensee, except to the extent prohibited under condition V.B.3. below, may dispose of PCB wastes listed in Attachment 8 of this license. This license constitutes authorization pursuant to Part 147 of Act 451 to dispose of PCB wastes. The licensee **must also obtain written approval from U.S. EPA pursuant to the federal Toxic Substance Control Act (TSCA) prior to disposing any PCB waste in the landfill** [emphasis added]."

As has already been communicated to the U.S. EPA, please again be advised that Michigan continues to seek the rescission of Part 147 of Act 451 (NREPA). This Part of the NREPA is not used as a basis for the regulation of PCBs in Michigan any longer or in approving the disposal of PCBs, except to the extent that it still "exists" and is cited in the manner shown above. Michigan instead defers to TSCA.

Your letter also mentions the 1987 Complaint filed by the State of Michigan against Allied Paper and others, in which Count III mentioned RCRA. In that Complaint, which was resolved and dismissed, Count III appropriately describes RCRA as applicable to "solid or hazardous waste," and in paragraph 56, Count III expressly asserts that "PCBs are a solid waste as defined by RCRA." This is consistent with Michigan's position that the PCB waste in question qualifies as a solid waste pursuant to that definition both state and federal regulations. This litigation was filed in 1987, before any full assessments had been conducted on the toxicity and extent of PCBs in the Kalamazoo River. Please note this Complaint also made claims pursuant to TSCA, the Solid Waste Management Act, CERCLA, The Clean Water Act, The Water Resources Commission Act, and the Solid Waste Management Act, to name but a few. In the early implementation of environmental programs, complaints filed frequently cited as many statutes as "might" be applicable to be protective. Michigan was seeking to assure that all bases that might end up being applicable had been covered. Additional federal legislation enacted since the filing of this Complaint has clarified the position of PCBs in regard to the applicability of RCRA and TSCA that did not exist when this Complaint was filed.

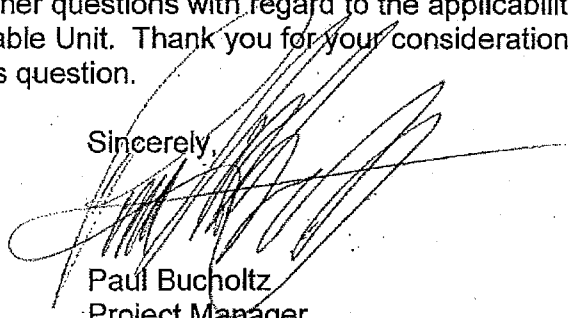
Mr. Michael Berkoff

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November 18, 2011

Please contact me if you have further questions with regard to the applicability of Part 111 to the Allied Paper Operable Unit. Thank you for your consideration of the State's position with respect to this question.

Sincerely,

A handwritten signature in black ink, appearing to read 'Paul Bucholtz', is written over the word 'Sincerely,'.

Paul Bucholtz
Project Manager
Specialized Sampling Unit
Superfund Section
Remediation Division
517-373-8174

cc: Ms. Nicole Wood-Chi, U.S. EPA
Ms. Polly Synk, Michigan Department of Attorney General
Mr. David Kline, MDEQ
Ms. Daria W. Devantier, MDEQ

